

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 09-149 MMC

Plaintiff,

v.

MICHAEL CHEN,

Defendant.

**ORDER GRANTING IN PART AND
DENYING IN PART GOVERNMENT'S
MOTION FOR ORDER FINDING
WAIVER OF ATTORNEY-CLIENT
PRIVILEGE; EXTENDING BRIEFING
SCHEDULE ON DEFENDANT'S
MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE**

Before the Court is the Government's "Motion to Waive Attorney-Client Privilege," filed October 9, 2014. Defendant Michael Chen ("Chen") has filed opposition. The matter came on regularly for hearing on November 19, 2014. Cynthia Stier appeared on behalf of the Government; Stanley L. Friedman appeared on behalf of defendant Chen. Having read and considered the papers filed in support of and in opposition to the motion and the arguments of counsel at the hearing, the Court hereby rules as follows.

To the extent the Government's motion seeks an order finding Chen has waived the attorney-client privilege as to the contentions made in his motion, filed October 6, 2014, challenging his conviction and sentence on grounds of ineffective assistance of counsel, the Government's motion is hereby GRANTED. See Bittaker v. Woodford, 331 F.3d 715, 716 (9th Cir. 2003) (noting "[i]t has long been the rule in the federal courts that, where a habeas petitioner raises a claim of ineffective assistance of counsel, he waives the

1 attorney-client privilege as to all communications with his allegedly ineffective lawyer”).

2 To the extent the Government’s motion seeks an order directing defense counsel to
3 provide to the Government documents and declarations, the motion is hereby DENIED,
4 without prejudice to the Government’s filing a motion for discovery pursuant to Rule 6 of the
5 Federal Rules Governing Section 2255 Proceedings.

6 In light of the above, the Court finds good cause exists to extend the briefing
7 schedule on Chen’s § 2255 motion, as follows:

8 1. No later than January 14, 2015, the Government shall file its response to
9 defendant’s motion.

10 2. No later than February 25, 2015, defendant shall file any reply.

11 3. As of February 25, 2015, unless the Court orders otherwise, the matter will stand
12 submitted.

13 **IT IS SO ORDERED.**

14 Dated: November 20, 2014

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16 MAXINE M. CHESNEY
17 United States District Judge
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